

International Child Relocation Issues :An Indian Perspective

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Magnitude of the Problem

- Over **35.42 million** Indians live abroad creating jurisdictional legal challenges in global family conflicts. Child removal & consensual relocation are undefined subjects. No joint parenting & shared custody defined in Indian statutes.
- India **lacks statutory remedies** for parental child removal, relocation & custody disputes. Reliance on **outdated Indian legislation & Judicial rulings**.
- Fall back on Guardianship & Sole Custody remedies by natural parents.
- 1980 Hague Convention on International Child Abduction. India not signatory.
- **Conflict of laws** leads to parallel unresolved litigation across jurisdictions.

No Definition of Domestic & International Child Removal and Relocation to and from India

- No statutory legal definition of child removal or consensual relocation in Indian laws, both in international & in domestic context.
- Reliance on **Guardian & Wards Act, 1890 (GWA)** & Constitutional prerogative *Habeas Corpus* Writ in *parens patriae* jurisdiction.
- Decisions based on "**Best Interest of the Child**" principle under the Juvenile Justice Act, 2015, upon India's accession to United Nations Convention on Rights of the Child (UNCRC) on 11 December, 1992.

Key Judicial Approaches

Early rulings: Supreme Court upheld **Comity of Courts**.
Summary return *Surinder (1984)*, *Elizabeth (1987)*.

Later shift: Emphasis on **Child Welfare Over Foreign Custody Orders** *Dhanwanti (1998)*, *Sarita (2000)*.

Summary return for determination by jurisdiction of closest contact. *Shilpa Aggarwal (2010)*.

Recent rulings: Courts reject automatic return, focus on case-by-case analysis *Nithya (2017)*, *Prateek (2017)*.

Return on Welfare Principle *Vasudha/Rohith (2022)*.



Relocation by Mirror Order Jurisprudence

Courts in different countries replicate **identical custody orders** to ensure enforceability & similar implementation.

Delhi High Court/Supreme Court & US Court collaboration for US relocation in *Jasmeet Kaur v. Navtej Singh* (2020).

In absence of codified Indian laws, potential model for **resolving international custody disputes** only through Court interventions.



Decision on Custody/Relocation AL vs. KL (Supreme Court 2021)

- Family Courts to follow procedure under Civil Code & Evidence Act to determine custody/relocation rights in Guardianship petitions.
- Adjudication of possible agreed joint shared parenting arrangement in child centric approach to be determined by evidence in Family Court.
- Relocation of child without Family Court consent not possible.
- Interparental child removal is not an Indian statutory offence & not recognised by any Indian law. 1980 Convention not acceded by India.

Y vs. X (Supreme Court 2024)

Cyclical Custody of Incapable Adult in UAE

- Incapable adult has right to have company of both parents.
- India based mother appointed guardian has access in UAE.
- Both parents appointed joint guardians in UAE by Court.
- Indian Courts have jurisdiction in best interest and welfare, if parent has no legal remedy in the Courts beyond Indian territory.
- Cyclical custody of incapable adult in UAE granted to mother.

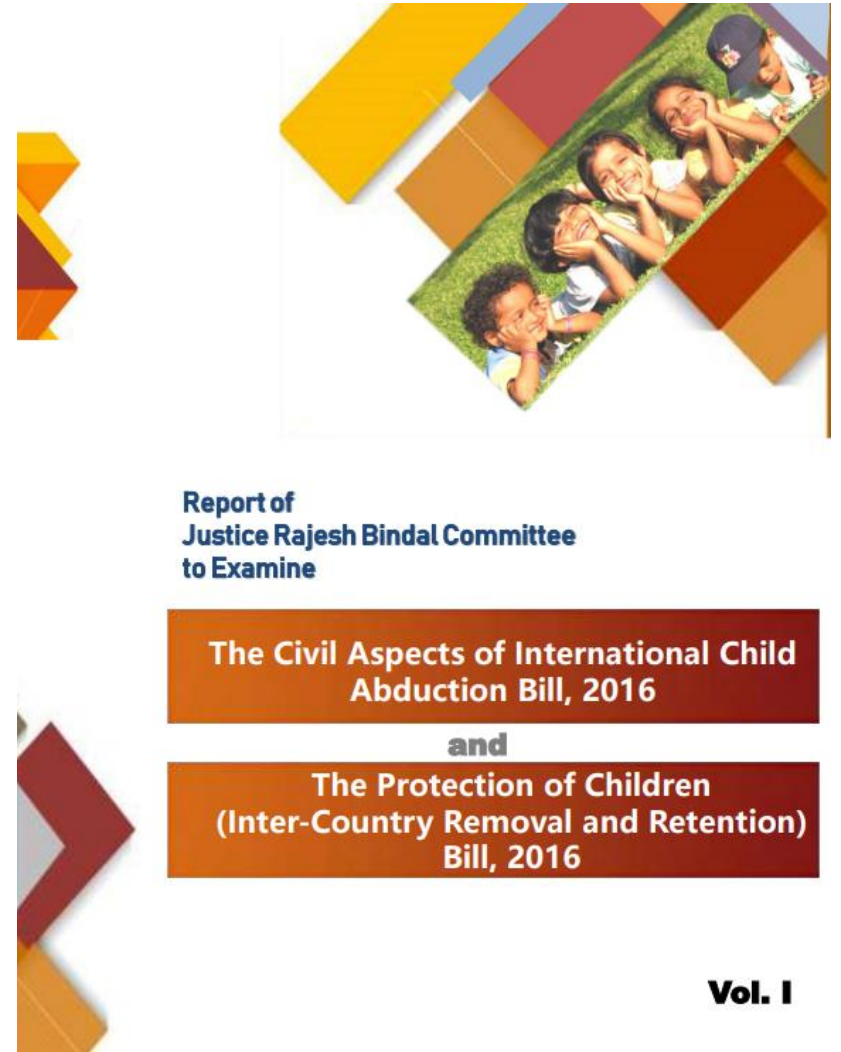


Landmark Case: *Ne v. A* (Bombay HC, 2024)

- **Child returned to the Netherlands in 7 weeks via *Habeas Corpus*.**
- Court upheld **child-centric jurisprudence**, rejecting forum shopping.
- A model for future **summary adjudication of child relocation cases**.

Need for Legal Reform

- **Justice Rajesh Bindal Committee (2017)** proposed a **Central Authority & Model law**.
- **The Protection of Children (Inter-Country Removal & Retention) Bill, 2018** proposed.
- **India must align with global standards** to encourage consensual relocation, protecting removed children & creation of mechanisms for consented international family relocation.



Conclusion: The Way Forward

01

Accession by India to the 1980 & 1996 Hague Conventions is essential.

02

Indian Courts should continue to evolve **mirror orders** as an interim solution.

03

Parens patriae jurisdiction must be strengthened for child welfare & consent relocation.